

1                                    AMENDMENT TO HOUSE BILL 5906

2            AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5906 by replacing  
3 everything after the enacting clause with the following:

4            "Section 1. Short title. This Act may be cited as the End  
5 Stage Renal Disease Facility Act.

6            Section 5. Definitions. As used in this Act:

7            "Committee" means the End Stage Renal Disease Advisory  
8 Committee.

9            "Department" means the Department of Public Health.

10           "Dialysis" means a process by which dissolved substances  
11 are removed from a patient's body by diffusion from one fluid  
12 compartment to another across a semipermeable membrane.

13           "Dialysis technician" means an individual who is not a  
14 registered nurse or physician and who provides dialysis care  
15 under the supervision of a registered nurse or physician.

16           "Director" means the Director of Public Health.

17           "End stage renal disease" means that stage of renal  
18 impairment that appears irreversible and permanent and that  
19 requires a regular course of dialysis or kidney  
20 transplantation to maintain life.

21           "End stage renal disease facility" or "ESRDF" means a  
22 facility that provides dialysis treatment or dialysis

1 training to individuals with end stage renal disease.

2 "Nurse" means an individual who is licensed to practice  
3 nursing under the Nursing and Advanced Practice Nursing Act.

4 "Patient" means any individual receiving treatment from  
5 an end stage renal disease facility.

6 "Person" means any individual, firm, partnership,  
7 corporation, company, association, or other legal entity.

8 "Physician" means an individual who is licensed to  
9 practice medicine in all of its branches under the Medical  
10 Practice Act of 1987.

11 Section 10. License required. Except as provided by this  
12 Act, no person shall open, manage, conduct, offer, maintain,  
13 or advertise an end stage renal disease facility without a  
14 valid license issued by the Department. All end stage renal  
15 disease facilities in existence as of the effective date of  
16 this Act shall obtain a valid license to operate within one  
17 year after the adoption of rules to implement this Act.

18 Section 15. Exemptions from licensing requirement. The  
19 following facilities are not required to be licensed under  
20 this Act:

21 (1) a home health agency licensed under the Home Health  
22 Agency Licensing Act;

23 (2) a hospital licensed under the Hospital Licensing Act  
24 or the University of Illinois Hospital Act; and

25 (3) the office of a physician.

26 Section 20. Issuance and renewal of license.

27 (a) An applicant for a license under this Act shall  
28 submit an application on forms prescribed by the Department.

29 (b) Each application shall be accompanied by a  
30 non-refundable license fee, as established by rule of the  
31 Department.

1 (c) Each application shall contain evidence that there  
2 is at least one physician responsible for the medical  
3 direction of the facility and that each dialysis technician  
4 on staff has completed a training program as required by this  
5 Act.

6 (d) The Department may grant a temporary initial license  
7 to an applicant. A temporary initial license expires on the  
8 earlier of (i) the date the Department issues or denies the  
9 license or (ii) the date 6 months after the temporary initial  
10 license was issued.

11 (e) The Department shall issue a license if, after  
12 application, inspection, and investigation, it finds the  
13 applicant meets the requirements of this Act and the  
14 standards adopted pursuant to this Act. The Department may  
15 include participation as a supplier of end stage renal  
16 disease services under Titles XVIII and XIX of the federal  
17 Social Security Act as a condition of licensure.

18 (f) The license is renewable annually after submission  
19 of (i) the renewal application and fee and (ii) an annual  
20 report on a form prescribed by the Department that includes  
21 information related to quality of care at the end stage renal  
22 disease facility. The report must be in the form and  
23 documented by evidence as required by Department rule.

24 Section 25. Minimum staffing. An end stage renal disease  
25 facility shall be under the medical direction of a physician  
26 experienced in renal disease treatment, as required for  
27 licensure under this Act. Additionally, at a minimum, every  
28 facility licensed under this Act shall ensure that whenever  
29 patients are undergoing dialysis all of the following are  
30 met:

31 (1) one currently licensed physician, registered  
32 nurse, or licensed practical nurse experienced in  
33 rendering end stage renal disease care is physically

1 present on the premises to oversee patient care; and

2 (2) adequate staff is present to meet the medical  
3 and non-medical needs of each patient, as provided by  
4 this Act and the rules adopted pursuant to this Act.

5 Section 30. Minimum standards.

6 (a) The rules adopted pursuant to this Act shall contain  
7 minimum standards to protect the health and safety of a  
8 patient of an end stage renal disease facility, including  
9 standards for:

10 (1) the qualifications and supervision of the  
11 professional staff and other personnel;

12 (2) the equipment used by the facility to insure  
13 that it is compatible with the health and safety of the  
14 patients;

15 (3) the sanitary and hygienic conditions in the  
16 facility;

17 (4) quality assurance for patient care;

18 (5) clinical records maintained by the facility;

19 (6) design and space requirements for the facility  
20 to insure safe access by patients and personnel and for  
21 ensuring patient privacy;

22 (7) indicators of the quality of care provided by  
23 the facility; and

24 (8) water treatment and reuse by the facility.

25 (b) These standards shall be consistent with the  
26 requirements for a supplier of end stage renal disease  
27 services under Titles XVIII and XIX of the federal Social  
28 Security Act.

29 Section 35. Training; minimum requirements. An end stage  
30 renal disease facility shall establish and implement a policy  
31 to ensure appropriate training and competency of individuals  
32 employed as dialysis technicians within the licensed

1 facility. The policy shall, at a minimum, define the acts and  
2 practices that are allowed or prohibited for such employees,  
3 establish how training will be conducted, and illustrate how  
4 initial competency will be established. Proof of initial and  
5 annual competency testing shall be maintained in the  
6 personnel file of each dialysis technician and shall be made  
7 available to the Department upon request. An individual may  
8 not act as a dialysis technician in an end stage renal  
9 disease facility unless that individual has been trained and  
10 competency tested in accordance with this Act and the rules  
11 adopted under this Act. Persons training to act as a  
12 dialysis technician must be under the direct supervision of a  
13 physician or an appropriately trained nurse.

14 Section 40. Inspections.

15 (a) The Department, whenever it deems necessary, may  
16 conduct an inspection, survey, or evaluation of an end stage  
17 renal disease facility to determine compliance with licensure  
18 requirements and standards or a plan of correction submitted  
19 as a result of deficiencies cited by the Department.

20 (b) An inspection conducted under this Section shall be  
21 unannounced.

22 (c) Upon completion of each inspection, survey, or  
23 evaluation, the appropriate Department personnel who  
24 conducted the inspection, survey, or evaluation shall submit  
25 a copy of their report to the licensee upon exiting the  
26 facility, and shall submit the actual report to the  
27 appropriate regional office. The report shall identify areas  
28 in a facility identified as deficient in compliance with the  
29 requirements of this Act or the standards adopted under this  
30 Act. The report and any recommendation for action by the  
31 Department under this Act shall be sent to the Department's  
32 central office together with a plan of correction from the  
33 facility. The plan of correction may contain related comments

1 or documentation provided by the licensee that may refute  
2 findings in the report, that explain extenuating  
3 circumstances that the facility could not reasonably have  
4 prevented, or that indicate methods and timetables for  
5 correction of deficiencies described in the report. A  
6 licensee has 10 days after the date of the inspection,  
7 survey, or evaluation to submit a plan of correction.

8 (d) The Department shall determine whether a facility is  
9 in violation of this Section no later than 60 days after  
10 completion of each inspection, survey, evaluation, or plan of  
11 correction.

12 (e) The Department shall maintain all inspection,  
13 survey, or evaluation reports for at least 5 years in a  
14 manner accessible to the public.

15 Section 45. Notice of violation. When the Department  
16 determines that a facility is in violation of this Act or of  
17 any rule promulgated hereunder, a notice of violation shall  
18 be served upon the licensee. Each notice of violation shall  
19 be prepared in writing and shall specify the nature of the  
20 violation and the statutory provision or rule alleged to have  
21 been violated. The notice shall inform the licensee of any  
22 action the Department may take under the Act, including the  
23 requirement of a plan of correction under Section 50, or  
24 licensure action under Section 60. The Director or his  
25 designee shall also inform the licensee of the right to a  
26 hearing under Section 60.

27 Section 50. Plan of correction.

28 (a) Each facility served with a notice of violation  
29 under Section 45 of this Act shall file with the Department a  
30 written plan of correction, which is subject to approval of  
31 the Department, within 10 days after receipt of such notice.  
32 The plan of correction shall state with particularity the

1 method by which the facility intends to correct each  
2 violation and shall contain a stated date by which each  
3 violation shall be corrected.

4 (b) If the Department rejects a plan of correction, it  
5 shall send notice of the rejection and the reason for the  
6 rejection to the licensee. The facility shall have 10 days  
7 after receipt of the notice of rejection to submit a modified  
8 plan. If the modified plan is not timely submitted, or if  
9 the modified plan is rejected, the facility shall follow a  
10 plan of correction imposed by the Department.

11 (c) If a facility desires to contest any Department  
12 action under this Section it shall send a written request for  
13 a hearing under Section 60 to the Department within 10 days  
14 of receipt of the notice of the contested action. The  
15 Department shall commence the hearing as provided in Section  
16 60. Whenever possible, all actions of the Department under  
17 this Section arising out of a single violation shall be  
18 contested and determined at a single hearing. Issues decided  
19 as the result of the hearing process may not be reheard at  
20 subsequent hearings under this Act, but such determinations  
21 may be used as grounds for other administrative action by the  
22 Department pursuant to this Act.

23 Section 55. Denial, suspension, revocation, or refusal  
24 to renew a license; suspension of a service.

25 (a) When the Director determines that there is or has  
26 been a substantial or continued failure to comply with this  
27 Act or any rule promulgated hereunder, the Department may  
28 issue an order of license denial, suspension, revocation, or  
29 refusal to renew a license in accordance with subsection (a)  
30 of Section 60 of this Act.

31 (b) When the Director determines that a facility has  
32 failed to demonstrate the capacity to safely provide one or  
33 more of its services to patients, the Department may issue an

1 order of service suspension in accordance with subsection (a)  
2 of Section 60 of this Act.

3 Section 60. Notice of administrative actions; hearing  
4 procedures.

5 (a) Notice of all administrative actions taken under this  
6 Act shall be effected by registered mail, certified mail, or  
7 personal service and shall set forth the particular reasons  
8 for the proposed action and provide the application or  
9 licensee with an opportunity to request a hearing. If a  
10 hearing request is not received within 10 days after receipt  
11 of the notice of administrative action, the right to a  
12 hearing is waived.

13 (b) The procedure governing hearings authorized by this  
14 Section shall be in accordance with rules promulgated by the  
15 Department consistent with this Act. A hearing shall be  
16 conducted by the Director or by an individual designated in  
17 writing by the Director as hearing officer. A full and  
18 complete record shall be kept of all proceedings, including  
19 notice of hearing, complaint, and all other documents in the  
20 nature of pleadings, written motions filed in the  
21 proceedings, and the report and orders of the Director and  
22 hearing officer. All testimony shall be reported but need  
23 not be transcribed unless the decision is appealed pursuant  
24 to Section 70 of this Act. Any interested party may obtain a  
25 copy or copies of the transcript on payment of the cost of  
26 preparing such copy or copies.

27 (c) The Director or hearing officer shall, upon his own  
28 motion or on the written request of any party to the  
29 proceeding, issue subpoenas requiring the attendance and  
30 testimony of witnesses and subpoenas duces tecum requiring  
31 the production of books, papers, records or memoranda. The  
32 fees of witnesses for attendance and travel shall be the same  
33 as the fees of witnesses before any circuit court of this

1 State. Such fees shall be paid when the witness is excused  
2 from further attendance. When the witness is subpoenaed at  
3 the instance of the Director or hearing officer, such fees  
4 shall be paid in the same manner as other expenses of the  
5 Department. When the witness is subpoenaed at the instance  
6 of any other party to a proceeding, the Department may  
7 require that the cost of service of the subpoena or subpoena  
8 duces tecum and the fee of the witness be borne by the party  
9 at whose instance the witness is summoned. In such case, the  
10 Department, in its discretion, may require a deposit to cover  
11 the cost of such service and witness fees. A subpoena or  
12 subpoena duces tecum issued under this Section shall be  
13 served in the same manner as a subpoena issued by a court.

14 (d) Any circuit court of this State, upon the  
15 application of the Director or the application of any other  
16 party to the proceeding, may, in its discretion, compel the  
17 attendance of witnesses, the production of books, papers,  
18 records or memoranda, and the giving of testimony before the  
19 Director or hearing officer conducting an investigation or  
20 holding a hearing authorized by this Act, by an attachment  
21 for contempt, or otherwise, in the same manner as production  
22 of evidence may be compelled before the court.

23 (e) The Director or hearing officer, or any party in a  
24 hearing before the Department, may cause the deposition of  
25 witnesses within the State to be taken in the manner  
26 prescribed by law for depositions in civil actions in courts  
27 of this State, and may compel the attendance of witnesses and  
28 the production of books, papers, records, or memoranda.

29 (f) The Director or Hearing Officer shall make findings  
30 of fact in such hearing and the Director shall render his  
31 decision within 60 days after the termination or waiving of  
32 the hearing unless he or she requires additional time for a  
33 proper disposition of the matter. When a hearing officer has  
34 conducted the hearing, the Director shall review the record

1 and findings of fact before rendering a decision. A copy of  
2 the findings of fact and decision of the Director shall be  
3 served upon the applicant or licensee in person, by  
4 registered mail or by certified mail in the same manner as  
5 the service of the notice of hearing. The decision denying,  
6 suspending, or revoking a license shall become final 35 days  
7 after it is mailed or served, unless the applicant or  
8 licensee, within the 35-day period, petitions for review  
9 pursuant to Section 70 of this Act.

10 Section 65. Receiving and investigating complaints. The  
11 Department shall establish by rule a procedure for receiving  
12 and investigating complaints regarding any ESRDF, consistent  
13 with federal complaint procedures.

14 Section 70. Judicial review. Whenever the Department  
15 refuses to grant or decides to revoke or suspend a license to  
16 open, conduct, or maintain an ESRDF, the applicant or  
17 licensee may have such decision judicially reviewed. The  
18 provisions of the Administrative Review Law and the rules  
19 adopted pursuant thereto shall apply to and govern all  
20 proceedings for the judicial review of final administrative  
21 decisions of the Department hereunder. The term  
22 "administrative decisions" is defined as in Section 3-101 of  
23 the Code of Civil Procedure.

24 Section 75. Fines. Any person opening, conducting, or  
25 maintaining an ESRDF without a license issued pursuant to  
26 this Act shall be guilty of a business offense punishable by  
27 a fine of \$5,000 and each day's violation shall constitute a  
28 separate offense. Any person opening, conducting, or  
29 maintaining an ESRDF who violates any other provision of this  
30 Act shall be guilty of a business offense punishable by a  
31 fine of not more than \$5,000.

1           Section 80. Injunctions. The operation or maintenance  
2 of an ESRDF in violation of this Act or of the rules adopted  
3 by the Department is declared a public nuisance inimical to  
4 the public welfare. The Director of the Department, in the  
5 name of the People of the State, through the Attorney General  
6 or the State's Attorney of the county in which the violation  
7 occurs, may, in addition to other remedies herein provided,  
8 bring action for an injunction to restrain such violation or  
9 to enjoin the future operation or maintenance of any such  
10 ESRDF.

11           Section 85. Department access to and reproduction of  
12 documents. The Department shall have access to and may  
13 reproduce or photocopy at its cost any books, records, and  
14 other documents maintained by the facility to the extent  
15 necessary to carry out the purposes of this Act and the rules  
16 adopted under this Act. The Department shall not divulge or  
17 disclose the identity of any patient or other information  
18 prohibited from disclosure by the laws of this State.

19           Section 90. Refusal to allow inspections. Any licensee,  
20 applicant for a license, or person operating what may be an  
21 end stage renal disease facility shall be deemed to have  
22 given consent to any authorized officer, employee, or agent  
23 of the Department to enter and inspect the facility in  
24 accordance with this Act. Refusal to permit such entry or  
25 inspection shall constitute grounds for denial, nonrenewal,  
26 or revocation of a license.

27           Section 95. Probationary license. If the applicant has  
28 not been previously licensed or if the facility is not in  
29 operation at the time application is made, the Department  
30 shall issue a probationary license. A probationary license  
31 shall be valid for 120 days unless sooner suspended or

1 revoked under this Act. Within 30 days prior to the  
2 termination of a probationary license, the Department shall  
3 fully and completely inspect the facility and, if the  
4 facility meets the applicable requirements for licensure,  
5 shall issue a license under this Act. If the Department finds  
6 that the facility does not meet the requirements for  
7 licensure but has made substantial progress toward meeting  
8 those requirements, the license may be renewed once for a  
9 period not to exceed 120 days from the expiration date of the  
10 initial probationary license.

11 Section 100. Change of ownership.

12 (a) Whenever ownership of a facility is transferred from  
13 the person named on the license to any other person, the  
14 transferee must obtain a new probationary license. The  
15 transferee shall notify the Department of the transfer and  
16 apply for a new license at least 30 days prior to final  
17 transfer.

18 (b) The transferor shall notify the Department at least  
19 30 days prior to final transfer. The transferor shall remain  
20 responsible for the operation of the facility until such time  
21 as a license is issued to the transferee.

22 (c) The license granted to the transferee shall be  
23 subject to any plan of correction submitted by the previous  
24 owner and approved by the Department and any conditions  
25 contained in a conditional license issued to the previous  
26 owner. If there are outstanding violations and no approved  
27 plan of correction has been implemented, the Department may  
28 issue a conditional license and plan of correction as  
29 provided in this Act.

30 (d) The transferor shall remain liable for all penalties  
31 assessed against the facility that are imposed for violations  
32 occurring prior to transfer of ownership.

1 Section 105. Access to information. The following  
2 information is subject to disclosure to the public by the  
3 Department:

4 (1) records of license inspections, surveys, and  
5 evaluations of facilities; and

6 (2) complaints and complaint investigation reports,  
7 except that a complaint or complaint investigation report  
8 shall not be disclosed to a person other than the  
9 complainant or complainant's representative before it is  
10 disclosed to a facility and except that a complainant's  
11 or patient's name shall not be disclosed. This  
12 information shall not disclose the name of any health  
13 care professionals or employees at the facility.

14 Section 110. Information available for public inspection.

15 (a) A facility shall post in plain view of the public  
16 (i) its current license, (ii) a description of complaint  
17 procedures established under this Act provided by the  
18 Department, and (iii) the name, address, and telephone number  
19 of a person authorized by the Department to receive  
20 complaints.

21 (b) A facility shall make the following information or  
22 documents available upon request for public inspection:

23 (1) a copy of any order pertaining to the facility  
24 issued by the Department or a court during the past 5  
25 years;

26 (2) a complete copy of every inspection report of  
27 the facility received from the Department during the past  
28 5 years;

29 (3) a description of the services provided by the  
30 facility and the rates charged for those services;

31 (4) a copy of the statement of ownership required  
32 by this Act; and

33 (5) a complete copy of the most recent inspection

1 report of the facility received from the Department. This  
2 information shall not disclose the name of any health  
3 care professionals or employees at the facility.

4 Section 115. End Stage Renal Disease Advisory Committee.

5 (a) The Director shall appoint an End Stage Renal  
6 Disease Advisory Committee to advise and consult with the  
7 Director in the administration of this Act. The Committee  
8 shall be composed of the following members:

9 (1) 2 members who represent end stage renal disease  
10 facilities;

11 (2) 2 members who are physicians licensed to  
12 practice medicine in all its branches;

13 (3) one member who is a board-certified  
14 nephrologist;

15 (4) one member who represents licensed hospitals;

16 (5) one member who is a registered professional  
17 nurse with experience treating end stage renal disease;

18 (6) one member of the general public who is  
19 currently receiving dialysis. The recommendations of  
20 professional organizations may be considered in selecting  
21 individuals for appointment to the End Stage Renal  
22 Disease Advisory Committee.

23 (b) Each member shall be appointed for a term of 3  
24 years, except that of the original members, 4 shall be  
25 appointed for a term of 2 years, and 4 shall be appointed for  
26 a term of 3 years. The term of office of each of the original  
27 appointees shall commence on July 1, 2003. A member appointed  
28 to fill a vacancy occurring prior to the expiration of the  
29 term for which his or her predecessor was appointed shall be  
30 appointed for the remainder of that term.

31 (c) The Committee shall meet as frequently as the  
32 Director deems necessary. Committee members, while conducting  
33 the business of the Committee, shall receive actual and

1 necessary travel and subsistence expenses when conducting  
2 such business away from their places of residence.

3 Section 120. Adoption of rules. The Department shall  
4 adopt rules to implement this Act, including requirements for  
5 physical plant standards and for the issuance, renewal,  
6 denial, suspension, and revocation of a license to operate an  
7 end stage renal disease facility. These rules shall be  
8 consistent with the requirements for end stage renal disease  
9 services under Title XVIII and XIX of the federal Social  
10 Security Act.

11 Section 125. Fees. The Department may establish and  
12 collect fees in amounts reasonable and necessary to defray  
13 the cost of administering this Act. In setting fees under  
14 this Act, the Department shall consider setting a range of  
15 license and renewal fees based on the number of dialysis  
16 stations at the end stage renal disease facility, the patient  
17 census, and the average costs involved in surveying the  
18 facility.

19 Section 130. Deposit of fees and penalties. Fees and  
20 penalties collected under this Act shall be deposited into  
21 the End Stage Renal Disease Facility Licensing Fund, which is  
22 hereby created as a special fund in the State treasury.  
23 Moneys in the Fund may be used, subject to appropriation, by  
24 the Department for the administration of this Act.

25 Section 135. The State Finance Act is amended by adding  
26 Section 5.570 as follows:

27 (30 ILCS 105/5.570 new)

28 Sec. 5.570. The End Stage Renal Disease Facility  
29 Licensing Fund.

1           Section 999. Effective date. This Act takes effect upon  
2    becoming law.".